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October 22, 2015

By ECF

Hon. Sterling Johnson, Jr.  
United States District Judge  
U.S. Courthouse  
500 Pearl Street  
New York, NY 10007

Re: United States v. Shavkat Abdullaev, et al.  
12 CR 626 (SJ)

Dear Judge Johnson:

This letter is respectfully submitted in support of defendant Abdullaev's request to modify the Court's venue instruction (pages 75-76 of the Final Charge). In the second paragraph of that charge, the Court instructs the jury that "[t]he *the government need not prove that the crime itself was committed in this district* or that a particular defendant was present here. It is sufficient to satisfy this element *if any act in furtherance of the specific crime you are considering occurred within this district.*"

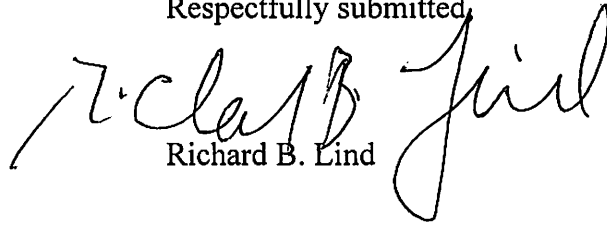
While the italicized language is satisfactory for Count One, it is not for Counts Two through Nine. For such substantive Counts, by contrast, more has to be shown, namely, that at least one of the crime's "essential conduct elements" (set forth at page 44 of the Final Charge) must have occurred in this district in order for venue to be proper here. *See United States v. Tzolov*, 642 F.3d 314, 318 (2d Cir. 2011) (quoting *United States v. Rodriguez-Moreno*, 526 U.S. 275, 280 (1999), and, as a consequence, "venue is not proper in a district in which the only acts performed by the defendant were preparatory to the offense and not part of the offense," *United States v. Beech-Nut Nutrition Corp.*, 871 F.2d 1181, 1190 (2d Cir. 1989).

Accordingly, we submit that the Court's charge be modified to state that with respect to Counts One through Nine, the government has to establish by a preponderance, that actual exportation occurred in this District.

**RICHARD B. LIND**

Thank you for the Court's consideration of this submission.

Respectfully submitted,

  
Richard B. Lind

cc: All Counsel